



Ask An Advisor: CAGP's Online Virtual Community of Professional Advisors

Did you know that membership with the Canadian Association of Gift Planners provides you with exclusive access to an online community of professional advisors across Canada at no additional cost?

That's right, as a member benefit of CAGP; our members are able to submit gift planning questions - whether technical, legal or ethical in context. Why is this online tool so beneficial? It provides charitable representatives and professional advisors at any experience level with the opportunity to submit an anonymous question and be confident that the answer they have received will be informative and correct.

DeWayne Osborn, CGA, CFP certified general accountant of Lawton Partners offers the online tool as a 'first stop for gift planners or professional advisors to confirm the context of any situation regarding a planned gift' which enables members to be informed with the right information before they respond to the donor or professional advisor. Often gift planners are not fully equipped with the right tools. The Ask An Advisor tool provides our members with the confidence that they understand the context of the gift and situation, so that they can work with and facilitate the needs of the donor or professional advisor.

It's an excellent learning tool, which also allows our members the opportunity to deal with other advisors and donors in an appropriate manner. More importantly, it gives our members the confidence to deal with their complex gifts or circumstances. CAGP members should consider DeWayne and the other professional advisors he consults as 'virtual members of their planned giving committee'.

Here are some examples of questions submitted anonymously by our CAGP members using the Ask An Advisor tool:

Question 1

How has the recent Budget announcement with regard to real estate and private securities impacted Gift Acceptance Policies? Do you have a sample that shows changes required due to the new CRA changes?

Ask An Advisor Response

Given that the cash proceeds from the sale of these properties is the subject of the gift, there should be no changes to the organization's gift acceptance policy required other than to say that the organization should quickly acknowledge the gift to ensure the transaction falls within the 30 days permitted. A typical indicator of gift acceptance is the issuance of a tax receipt. On that receipt is the date of gift. It is critical that this date of gift be within 30 days of the charity actually receiving the cash.

It is not clear how the legislation will work with regard to the anti-avoidance rules. It appears from the legislation that the organization will not have a role in the anti-avoidance process. I



suspect a special form (e.g. similar to the 1170 listed securities) will be developed for the taxpayer to complete to be accompanied by the tax receipt with the corresponding dates clearly indicated.

What will change is the organization's promotional materials! It will be critical that the organization circulate information on these proposed rules that take effect post 2016 to their donors and their donors' tax preparers. I can ensure you that third-party organizations such as CPA, CFP, ADVOCIS, CLU, financial planning firms, and other professional organizations will be actively promoting this substantive tax legislation.

Question 2

I am currently working on recruiting PG advisory committee members. We have identified some candidates for the committee, several of them are also volunteers for one of our organization's programs, when they help our members with their expertise in financial planning, tax and so on.

Is there any ethical issue if we recruit these volunteers as our PG advisory committee members, and also refer our members and/or their families to them for professional services, when requested by our donors/members?

Or, should our PG advisory committee members be arm's length?

Ask An Advisor Response

This is a great question in that is commonly misunderstood. There is nothing unethical about referring donors to experts who also volunteer for the organization. The ethical considerations come into play when there is compensation being paid to the group receiving the referral which is deemed to give them inside information and/or access to clients that a neutral third party would not have. The other consideration is that no compensation is paid by the group receiving the referral to the organization making the referral. If this was the case, then there would be an ethical problem.

Remember, the act of the referral does not in itself mean anything. It is simply stating that the organization is referring the individual to groups that it feels are experts in the area and can afford them some assistance. It is up to the referred person to engage the party to provide that service, which is totally separate from the act of the referral itself.

Lastly, I have a significant problem with charities that request copious amounts of volunteer time from individuals and groups that have particular skill sets, and yet when there is opportunity to hire that same expert volunteer group to render services for the organization (at fair market value prices), the volunteers are ignored over perceived concerns re: ethical behavior and/or arm's length relationships. The two are completely separate! The act of making a referral, provided the referring party does not receive compensation for the referral or for the business that may ensue because of the referral (e.g. commission split, referral fees, etc), does not promise or guarantee that the group receiving the referral will actually get the business. That is up to the potential new client and the service provider to negotiate at arm's length.



Question 3

My question pertains to gifts not by will but by distribution of a capital interest in an estate to a charity. As the donation tax credit is not available to the executor/trustee if the charity receives a distribution in satisfaction of its capital interest in the estate/trust, does the charity issue a donation tax receipt for the distribution received? If a donation tax receipt is not to be issued by the charity, is a acknowledgement receipt appropriate? More importantly, how does the recipient charity know to do this?

Ask An Advisor Response

No, the gift is not a gift as defined as a voluntary act without benefit. The distribution to a beneficiary is not voluntary but compelled by the trust document.

The charity does not issue a tax receipt since there is no gift. It is up to the charity to know the source of the funds and who the donor is. In this case, a trust. If a trust, it is incumbent on the charity to make inquiry as to whether or not the contribution is a gift or compulsory payment to a beneficiary of the trust.

Failing that, it is up to the financial advisor to know to inform the charity to issues an acknowledgement receipt to evidence that the trustees acted in compliance with the terms of the trust.

Learn more today about our CAGP membership benefits by contacting:

National Membership Coordinator

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